



THE SUPREME COURT OF APPEAL  
REPUBLIC OF SOUTH AFRICA

**MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL**

From: The Registrar, Supreme Court of Appeal  
Date: 30 September 2021  
Status: Immediate

*Please note that the media summary is intended for the benefit of the media and does not form part of the judgment of the Supreme Court of Appeal.*

**Member of the Executive Council for Health and Social Development, Gauteng  
v M M obo O M [2021] ZASCA 128**

Today the Supreme Court of Appeal dismissed an appeal from the Gauteng Division of the High Court, Pretoria (per Nair AJ). Ms M gave birth to OM on 7 December 2010. During the birth process, OM suffered a hypoxic ischemic injury which resulted in cerebral palsy. As a consequence, Ms M sued the Member of the Executive Council for Health and Social Development, Gauteng (the MEC) on her own behalf and on behalf of OM. The MEC is legally liable for acts of employees at the Kalafong hospital (the hospital), which is where OM was born. The issues were whether the hospital staff had been negligent and, if so, whether that negligence caused the injury and its sequelae to OM.

The high court held that Ms M had succeeded in proving both negligence and that it had caused the injury to OM. The MEC appealed to the Supreme Court of Appeal. The matter revolved principally around the interpretation of tracings made by a cardiotocograph (CTG) during the critical period. A second issue arose during the trial when it was established that the placenta of Ms M had villitus of unknown etiology (VUE). This is associated with the placenta having abnormal blood vessels.

This meant that OM was more vulnerable to being injured than would have been the case with a foetus supplied with oxygen by a placenta without that pathology. It was, however, agreed by the expert witnesses that this did not cause the injury to OM. It was not the cause of the foetal distress that mattered but any failure to observe the signs of its presence and take steps to alleviate the stress and accelerate his delivery.

The interpretation of the tracings was therefore the pivotal issue in the matter. Various experts testified on how the CTG tracings should have been interpreted. In addition, nursing experts prepared a joint minute. That joint minute and the evidence of experts called by Ms M agreed that the tracings between 20h40 and 20h58 indicated foetal distress. Reasonable nursing staff would have called a doctor no later than 20h58. A reasonable doctor would have observed closely and, within ten minutes thereafter, have arranged for an expedited delivery. This could have taken place within 15 to 20 minutes after 21h15 at the latest. Since it was agreed by all that the injury occurred between 21h34 and 21h50, when OM was born, all damage would probably have been avoided had those actions been taken. Since none of those actions were taken, the hospital staff were negligent and that negligence gave rise to the injury suffered by OM. The high court could thus not be faulted for having reached that conclusion and the appeal was dismissed with costs of two counsel, where so utilised.